

Costs – Supplement (HMG Circular No. 1/2015, dated 25 May 2015)

This circular seeks to clarify the Registrar's practice in relation to costs and should be read together with HMG Circular 3 of 2011.

This circular supercedes and incorporates the relevant portions of HMG Circular 7 of 2011.

The rules referred to in this circular are rules from the Trade Marks Rules (Cap 332, 2008 Rev Ed) ("**Rules**").

HMG Circular No 3/2011 relates to costs, including taxation. This circular supplements HMG Circular No 3/2011 and provides clarification on some of the items in a Bill of Costs submitted for a taxation hearing.

A. COST ITEMS

Where parties have agreed on a particular costs item in the bill of costs, the Registrar will not intervene in relation to that item and will award the quantum as agreed between the parties.

In the event that parties disagree in relation to a particular item claimed, the Registrar will award an amount for the item having regard to the Fourth Schedule as well as to the particular circumstances of the case.

B. DISBURSEMENTS

Similarly, where parties have agreed on a particular item claimed, the Registrar will not intervene in relation to that item and will award the quantum as agreed between the parties.

In the event that parties disagree in relation to a particular item claimed, the Registrar will only award claims which are reasonable (see Section C below for the Registrar's practice in relation to large disbursement items). Generally, standard claims which are substantiated with receipts will be awarded.

C. LARGE DISBURSEMENT ITEMS – CIRCUMSTANCES IN WHICH COSTS OF MARKET SURVEY SHOULD BE RECOVERABLE

The Registrar clarifies, particularly in relation to large disbursement items, that the recovery of such disbursement items will be subject to the non-compensatory principle under Rule 75(2). This is consistent with the fact that IPOS is a low cost tribunal.

In relation to survey evidence, where appropriate, the Registrar has been and will continue to accept survey evidence in relation to cases and proceedings before him, in accordance with the practice of the Courts.

At the same time, in awarding costs for survey evidence, the Registrar will apply a test based on the usefulness, reasonableness and proportionality of the evidence. To illustrate, if the survey done is prohibitively expensive and/or the survey provided is found not to be particularly useful, then the Registrar may disallow costs, or if costs are allowed, will drastically cut down on the reimbursement of the costs for the survey carried out by the winning party.

D. CLARIFICATION ON PARTS OF HMG CIRCULAR 3 OF 2011 WHICH HAVE BEEN SUPERCEDED

Item 9 in the 4th Schedule (General and travelling expenses of witness required to attend the hearing) has been removed from the **Rules** with effect from 13 November 2014.

Thus, for the avoidance of doubt, item (v) in the section on **Guidelines to the Application of the Scale of Costs**, under **Part A. Liability for Costs of HMG Circular 3 of 2011** is superceded.

The guidance set out in Sections B and C above, as appropriate, will apply instead.